

IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH.

L.P.A.No.104 of 2004
Date of Decision: 18.4.2007

Atma Singh

....Appellant through
Mr. I.B. Bhandari, Advocate

Versus

Union of India and others

..... Respondents through
Mr.P.C. Rakra, Advocate

CORAM : HON'BLE MR.JUSTICE VIJENDER JAIN,
CHIEF JUSTICE.
HON'BLE MR.JUSTICE RAJIVE BHALLA

1. Whether Reporters of Local Newspapers may be allowed to see the judgement ?
2. To be referred to the Reporters or not ?
3. Whether the judgement should be reported in the Digest ?

VIJENDER JAIN, CHIEF JUSTICE

By way of this appeal, the appellant impugns the order of the learned Single Judge dated 9.4.2003, dismissing his writ petition.

The appellant herein was working as a Rakshak in the Railway Protection Force, Northern Railway at Ferozepur. He was served with a Memorandum dated 30.3.1981 proposing to hold an enquiry under Rule 44 of the Railway Protection Force Rules, 1959 (hereinafter referred to as 'the Rules') read with Section 9(1) (i) of the Railway Protection Force Act, 1957 (hereinafter referred to as 'the Act'). The memorandum, inter alia, alleged that some miscreants stole Bengal Coal from Loco Shed Ferozepur (duty

point Nos.6 & 5) weighing about 427 Kgs. either with the active connivance of Atma Singh (the appellant) and Kashmir Singh or due to their negligence. It was alleged that the miscreants upon being challenged by others on duty ran away, leaving behind the coal. The appellant in his reply to the memorandum, denied the allegations. A departmental enquiry found that the charges levelled against the appellant and another Rakshak, namely; Kashmir Singh were fully proved. The Chief Security Officer accepted the enquiry report and issued a notice dated 14.12.1981, requiring the appellant, to show cause against his proposed removal from service. The appellant's reply was found to be unsatisfactory and vide order dated 12.2.1982, the Chief Security Officer directed removal of the appellant from service. An appeal and thereafter a revision filed by the appellant were also dismissed.

The appellant, thereafter, impugned the aforementioned orders by way of a writ petition, which was dismissed by the learned Single Judge, vide order dated 9.4.2003. Before the learned Single Judge, the appellant, alleged that the Assistant Security Officer did not have jurisdiction to initiate disciplinary proceedings. The enquiry was vitiated due to bias, as the appellant's guilt had been pre-judged. The orders passed by the appellate and revisional authorities stood vitiated for violation of the principles of natural justice, as no opportunity of personal hearing had been granted to the appellant. The revisional authority's order was passed in violation of Rule 60 read with Rule 58 of the Rules and the punishment was arbitrary and shockingly disproportionate to the misconduct alleged against the appellant. The learned Single Judge held that the Act and the Rules, left no manner of doubt that the Assistant Security Officer was competent to initiate disciplinary action, as the appellant was initially appointed by the

Assistant Security Officer. It was also held that the enquiry did not suffer from any illegality, violation of the principles of natural justice or bias. It was also held that as the appellant had failed to establish any prejudice for the alleged violation of the Rules and even though the decision of the revisional authority did not depict a literal non compliance of Rule 60, it did not call for interference. Another finding recorded, was that the punishment did not shock the conscience and could, therefore, not be held to be disproportionate to the offence committed.

Counsel for the appellant has addressed arguments on two points. The first being, that the punishment imposed is grossly disproportionate to the misconduct alleged and the second that the order passed by the revisional authority was violative of Rule 60 read with Rule 58 of the Rules.

Counsel for the appellant contends that a perusal of the charge sheet, the memorandum of charges, the enquiry report, the order of removal and the orders passed in appeal and revision, do not indict the appellant for connivance or collusion in the pilferage of coal. The appellant, has been found guilty of negligence. The authorities failed to consider that no loss was caused as the coal was immediately recovered. The fact that appellant had already put in 25 years of service, at the time of his dismissal was not considered and, therefore, the order of punishment was grossly disproportionate to the alleged misconduct.

It is next contended that while considering a plea in revision and as set down in Rule 60, the revisional authority is required to adjudicate the revision, in accordance with the provisions of Rule 58(2) of the Rules. The revisional authority, however, failed to comply with the provisions of

Rule 58 and passed a cryptic, non-speaking order, in violation of the provisions of Rules 58, read with Rule 60.

Counsel for the respondents, however, contends that the order passed by the learned Single Judge does not suffer from any error of law, as would require interference. The findings returned by the learned Single Judge, that the impugned enquiry and the orders passed thereon do not suffer from any error of law, do not call for interference. The appellant has failed to establish violation of any statutory provision. The appellant was performing the duty of a Rakshak and his duty was to protect railway property. His negligence in protecting railway property would necessarily invite the extreme penalty of removal from service. The appellate and the revisional authorities considered the entire gamut of the case, including the appellant's service record and thereafter passed the impugned orders.

We have heard learned counsel for the parties and perused the paper book including the impugned order.

As regards the first contention, namely; that the punishment is disproportionate to the offences alleged, suffice is to say that in the facts and circumstances of the present case, the punishment imposed is neither excessive nor harsh and does not in any manner, shock the conscience. The appellant was working as a Rakshak. His duty was to protect railway property from theft, pilferage and damage. During his duty, a large quantity of coal was allegedly removed. But for the vigilance of other officials, railways would not have suffered a loss. The fact that the thieves escaped, leaving behind the coal, in our considered opinion, does not, in any manner, mitigate the appellant's negligence. His failure to detect the theft or apprehend the thieves was a serious infraction of duty. The failure of the

miscreants to make away the coal, on account of the vigilance of other personnel, cannot be pressed into service by the appellant, to allege that the punishment is harsh and disproportionate. The fact that no loss was suffered by the railways, in our considered opinion, is irrelevant. The nature of punishment, would vary from case to case and in our considered opinion, would necessarily relate to the nature of duties to be performed by the delinquent official. A person on guard duty requires a heightened degree of vigilance and, therefore, for such a person to allege that negligence would be mitigated by the failure of the miscreants to make away with the property cannot be accepted. The judgement relied upon by counsel for the appellant namely; **U.P. State Road Transport Corporation and others V. Mahesh Kumar Mishra and others**, AIR 2000 S.C. 1151, in support of his contention, that the penalty imposed was disproportionate, to the alleged infraction is inapplicable. The said judgement deals with the case of a bus conductor and was rendered on its own peculiar facts. The quantum of punishment imposed was held to be disproportionate to the misconduct alleged, as the enquiry suffered from certain errors.

Another contention asserted, by counsel for the appellant, that the authorities failed to take into consideration that the appellant had rendered 25 years service is factually incorrect. The orders passed by the appellate authority considering the appellant's service record reads as follows :-

“The past record of service is not relevant in determining the quantum of punishment. The plea of Atma Singh that his past services be taken into account has no relevance. All the same,

to put records straight, I would add that his service record is very unsatisfactory and it is surprising how he has survived in service so long.”

Consequently, we hold that the punishment imposed upon the appellant is not disproportionate to the alleged infraction and nor does it shock the conscience of the Court.

The next point urged is that the revisional authority did not pass an order, in accordance with the provisions of Rule 60, read with Rule 58 of the Rules. We have perused the order passed in revision and are satisfied that the order does not call for any interference. Appellate or revisional authorities, though required to assign reasons are not expected to write elaborate judgements, as are required by Courts of law. These authorities must assign clear and explicit reasons, so as to enable a writ Court, to infer that due consideration was given to the points alleged in the appeal/revision. A perusal of the order passed in revision discloses that the revisional authority was conscious of the provisions of Rule 58 and, thus, observed that the enquiry had been conducted, in accordance with the procedure prescribed. It also examined the findings recorded by the Enquiry Officer, the punishing and the appellate authority and agreed with them. The judgement relied upon by counsel for the appellant, namely; **Ram Chander V. Union of India and others**, 1986 Service Law Cases 382, pertains to the interpretation of provisions of the Railway Servants (Discipline & Appeal) Rules, 1968 and Rule 22(2) Central Civil Services (Classification, Control & Appeal) Rules, 1965. The appellant's service is not governed by the aforementioned Act and Rules but by the Railway

Protection Force Rules, 1959 and the Railway Protection Force Act, 1957 and, therefore, the aforementioned judgement is inapplicable to the appellant's case.

The enquiry report, the impugned orders, as also the order of the learned Single Judge, in our considered opinion, do not suffer from any error of law. The appellant, as held by the learned Single Judge, failed to establish any prejudice that may have been caused, for minor infractions of the rules. Violation of a rule, without any corresponding prejudice having visited a delinquent employee, cannot be a ground to grant relief. Consequently, we find no merit in the present appeal, which is consequently dismissed.

(VIJENDER JAIN)
CHIEF JUSTICE

18.4.2007
GS

(RAJIVE BHALLA)
JUDGE